

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES ROGERS,

Plaintiff,

vs.

CITY OF DETROIT, et al.,

Defendants.

CIVIL ACTION NO. 08-CV-10314

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MONA K. MAJZOUN

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL DISCOVERY (DOCKET NO. 59)**

This matter comes before the Court on Plaintiff's Motion To Compel Discovery filed on March 13, 2009. (Docket no. 59). Defendants filed a Response To Plaintiff's Motion To Compel Discovery on March 25, 2009. (Docket no. 64). Plaintiff filed a Reply on April 2, 2009. (Docket no. 67). This motion was referred to the undersigned for decision. (Docket no. 61). The parties filed a Joint List Of Unresolved Issues on April 28, 2009 and the Court heard oral argument on this matter on May 13, 2009. (Docket no. 70). The motion is now ready for ruling.

On February 26, 2009 the Court entered a stipulated order of the parties ordering Defendants to respond to Plaintiff's Second Request For Production Of Documents by February 27, 2009. (Docket no. 57). Defendants failed to timely respond and Plaintiff filed this Motion to Compel. (Docket no. 59). The parties resolved all issues prior to the hearing except Plaintiff's Request for Production No. 1 wherein Plaintiff asks for "[a]ny and all training records of each of the named Defendants' (sic) reflecting training they have received with respect to (1) Use of Force and (2) Arrests." (Docket no. 70). Defendants produced non-responsive documents including Training Directives, which were not specific to any of the named Defendants and Defendants did not indicate

whether there were other responsive documents within their possession, custody or control. Fed. R. Civ. P. 34. Defendants did not otherwise object, claim a privilege or move for a protective order for the requested records.

Request for Production No. 1 is relevant and limited to issues raised in Plaintiff's Complaint related to the use of force and arrest, including Plaintiff's claims against Defendant City that it failed to adequately train officers in the proper policies and procedures for establishing probable cause to arrest and/or effectuate arrest without the use of excessive force and failed to adequately train and/or supervise officers regarding the proper use of force. Fed. R. Civ. P. 26(b). (Docket no. 1). At the hearing, Defendants' counsel testified that since the filing of Plaintiff's Motion to Compel he is now clear on the types of documents which the Request is seeking and that an investigator is searching for responsive documents. The Court ordered at the hearing that on or before May 22, 2009 Defendants will either produce the responsive documents or amend their response to indicate that they have produced all responsive documents within their possession, custody or control.

Plaintiff in his motion also requested costs and attorneys fees pursuant to Fed. R. Civ. P. 37 for Defendants' failure to timely respond to discovery. Defendants set forth the reason for their failure to timely respond in their Response brief and again at the hearing. Furthermore, Defendants agreed to search for further responsive documents when they became aware of the nature of the documents sought by Request for Production No. 1. The Court will deny without prejudice at this time Plaintiff's request for costs and attorneys fees. Fed. R. Civ. P. 37(a)(5)(A)(iii).

IT IS THEREFORE ORDERED that Plaintiff's Motion To Compel Discovery (docket no. 59) is GRANTED in part and Defendants will produce all documents responsive to Request for Production No. 1 on or before May 22, 2009 or amend their response to indicate that they have produced all documents within their possession, custody or control no later than May 22, 2009. The remainder of Plaintiff's Motion To Compel Discovery, including the request for costs and attorneys fees, is DENIED.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: May 19, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: May 19, 2009

s/ Lisa C. Bartlett
Courtroom Deputy